

AMENDED IN ASSEMBLY JUNE 22, 2004

AMENDED IN ASSEMBLY JUNE 9, 2004

**SENATE BILL**

**No. 1325**

**Introduced by Senator Kuehl**

February 18, 2004

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An act to add Section 2282.5 to the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 1325, as amended, Kuehl. Hospitals: physicians and surgeons: self-governance.

The Medical Practice Act provides for licensing and regulation of physicians and surgeons by the Medical Board of California. Existing law provides that the practice of medicine in a licensed general or specialized hospital having 5 or more physicians and surgeons on the medical staff without provision for organization and self-governance of the medical staff under certain rules constitutes unprofessional conduct subject to discipline by the board under the act. A violation of the Medical Practice Act is a crime.

This bill would ~~define the term "medical staff self-governance" and would specify certain independent rights and responsibilities that~~ would be included in a hospital medical staff self-governance. The bill would require the medical staff and the hospital governing ~~body~~ board to meet and confer to resolve disputes related to these provisions, and would authorize court relief in certain circumstances. *The bill would make findings and declarations of the Legislature in this regard.*

Because the bill would change the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) *The Legislature finds and declares that*  
2     *providing quality medical care in hospitals depends on the mutual*  
3     *accountability, interdependence, and responsibility of the medical*  
4     *staff and the hospital governing board for the proper performance*  
5     *of their respective obligations.*  
6     (b) *The Legislature further finds and declares that the*  
7     *governing board of a hospital must act to protect the quality of*  
8     *medical care provided and the competency of its medical staff, and*  
9     *to ensure the responsible governance of the hospital in the event*  
10    *that the medical staff fails in any of its substantive duties or*  
11    *responsibilities. Nothing in this act shall be construed to*  
12    *undermine this authority. The final authority of the hospital*  
13    *governing board may be exercised for the responsible governance*  
14    *of the hospital or for the conduct of the business affairs of the*  
15    *hospital; however, that final authority may only be exercised with*  
16    *a reasonable and good faith belief that the medical staff has failed*  
17    *to fulfill a substantive duty or responsibility in matters pertaining*  
18    *to the quality of patient care. It would be a violation of the medical*  
19    *staff's self-governance and independent rights for the hospital*  
20    *governing board to assume a duty or responsibility of the medical*  
21    *staff precipitously, unreasonably, or in bad faith.*  
22    (c) *Finally, the Legislature finds and declares that the specific*  
23    *actions that would constitute bad faith or unreasonable action on*  
24    *the part of either the medical staff or hospital governing board will*  
25    *always be fact-specific and cannot be precisely described in*  
26    *statute. The provisions set forth in this act do nothing more than*  
27    *provide for the basic independent rights and responsibilities of a*  
28    *self-governing medical staff. Ultimately, a successful relationship*  
29    *between a hospital's medical staff and governing board depends*

1 *on the mutual respect of each for the rights and responsibilities of*  
2 *the other.*

3 SEC. 2. Section 2282.5 is added to the Business and  
4 Professions Code, to read:

5 ~~2282.5. (a) The term “medical staff self-governance” means~~  
6 ~~the inherent professional rights and responsibilities of the medical~~  
7 ~~staff with respect to the medical staff members’ professional~~  
8 ~~services, obligations, responsibilities, and functions performed in~~  
9 ~~a general or specialized hospital, including medical staff~~  
10 ~~organization, administration, and operation as specified in this~~  
11 ~~section.~~

12 ~~The Legislature acknowledges that the provision of quality~~  
13 ~~medical care in hospitals depends on the mutual accountability,~~  
14 ~~interdependence, and responsibility for the proper performance of~~  
15 ~~the respective obligations of the medical staff and the hospital~~  
16 ~~governing body.~~

17 ~~(b) At a minimum, a hospital medical staff self-governance~~  
18 ~~shall include the independent right and responsibility of the~~  
19 ~~medical staff to do all of the following:~~

20 ~~(1) Initiate, develop, and adopt medical staff bylaws, rules, and~~  
21 ~~regulations, and amendments thereto, subject to the approval of~~  
22 ~~the governing body, which shall not be unreasonably withheld.~~

23 ~~(2) Establish the~~

24 ~~2282.5. (a) The medical staff’s right of self-governance shall~~  
25 ~~include, but not be limited to, all of the following:~~

26 ~~(1) Establishing, in medical staff bylaws, rules, or regulations,~~  
27 ~~criteria and standards, consistent with Article 11 (commencing~~  
28 ~~with Section 800) of Chapter 1 of Division 2, for medical staff~~  
29 ~~membership and privileges, subject to paragraph (1); and enforce~~  
30 ~~enforcing those criteria and standards.~~

31 ~~(3) Establish~~

32 ~~(2) Establishing, in medical staff bylaws, rules, or regulations,~~  
33 ~~clinical criteria and standards to oversee and manage quality~~  
34 ~~assurance, utilization review, infection control, and other medical~~  
35 ~~staff activities including, but not limited to, periodic meetings of~~  
36 ~~the medical staff and its committees and departments and review~~  
37 ~~and analysis of patient medical records.~~

38 ~~(4) Select and remove~~

39 ~~(3) Selecting and removing medical staff officers.~~

40 ~~(5) Assess~~

1 (4) Assessing medical staff dues and ~~utilize~~ utilizing the  
2 medical staff dues as appropriate for the purposes of the medical  
3 staff.

4 ~~(6) Access and use~~

5 (5) The ability to retain and be represented by independent  
6 legal counsel at its ~~expense~~ the expense of the medical staff.

7 ~~(c) Nothing in this section limits the responsibilities of the~~  
8 ~~medical staff or the hospital governing body from performing its~~  
9 ~~respective duties as otherwise required by law or regulation.~~

10 ~~(d)~~

11 (6) Initiating, developing, and adopting medical staff bylaws,  
12 rules, and regulations, and amendments thereto, subject to the  
13 approval of the hospital governing board, which approval shall not  
14 be unreasonably withheld.

15 (b) The medical staff bylaws shall not interfere with the  
16 independent rights of the medical staff to do any of the following,  
17 but shall set forth the procedures for:

18 (1) Selecting and removing medical staff officers.

19 (2) Assessing medical staff dues and utilizing the medical staff  
20 dues as appropriate for the purposes of the medical staff.

21 (3) The ability to retain and be represented by independent  
22 legal counsel at the expense of the medical staff.

23 (c) With respect to any dispute arising under this section, the  
24 medical staff and the hospital governing ~~body~~ board shall meet and  
25 confer in good faith to resolve the dispute. Whenever any person  
26 or entity has engaged in or is about to engage in any acts or  
27 practices that hinder, restrict, or otherwise obstruct the ability of  
28 the medical staff to exercise its rights, obligations, or  
29 responsibilities under this section, the superior court of any  
30 county, on application of the medical staff, and after determining  
31 that reasonable efforts, including reasonable administrative  
32 remedies provided in the ~~bylaws~~ medical staff bylaws, rules, or  
33 regulations, have failed to resolve the dispute, may issue an  
34 injunction, writ of mandate, or other appropriate order.  
35 Proceedings under this section shall be governed by Chapter 3  
36 (commencing with Section 525) of Title 7 of Part 2 of the Code of  
37 Civil Procedure.

38 SEC. 3. No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school

1 *district will be incurred because this act creates a new crime or*  
2 *infraction, eliminates a crime or infraction, or changes the penalty*  
3 *for a crime or infraction, within the meaning of Section 17556 of*  
4 *the Government Code, or changes the definition of a crime within*  
5 *the meaning of Section 6 of Article XIII B of the California*  
6 *Constitution.*

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